IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (MVA) No. 150 of 1993.

Date of Decision: 10th October, 2006.

Bimla and others. **Appellants.**

Versus

Pritam Chand and others. **Respondents.**

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The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting[1]?

For the appellants: Mr. Gulzar Rathore, Advocate.

For the respondent: Mr. Vikas Rajput, Advocate, for respondent No.2.

V.K. Gupta, C.J. (Oral).

Mr. Gulzar Rathore, Advocate has stated that appellant No.1 Het Ram has died and this appeal in so far as he is concerned has abated. In the claim petition, the name of claimant-appellant No.1 shall be deleted.

With respect to an accident occurring on the night intervening 27/28th October, 1987 relating to Truck No. HPS-4466, a Claim Petition was filed by the claimants for claiming compensation on account of the loss suffered by them owing to the death of deceased Durga Singh, the son of appellant-claimant No.1 Het Ram, husband of

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[1] Whether reporters of the Local Papers are allowed to see the Judgment?

appellant-claimant No.2 Bimla and father of other appellants. Respondents No.1 and 3 in this appeal who were respondents No.1 and 3 in the Claim Petition had been proceeded ex-parte by the Claims Tribunal. The Claim Petition was contested by respondent No.2 – New India Assurance Company only. Following eight Issues were framed by the Tribunal for trial:-

"1. Whether the accident resulting in the death of deceased Durga Singh was the result of rash/negligent driving of the driver of Truck No.HPS-4466? OPP.

2. If issue No.1 is proved in favour of the petitioners, to what amount of compensation they are entitled to and from whom? OPP.

3. Whether the accidental vehicle was insured with respondent No.2? OPP.

4. If issue No.3 is proved, whether deceased was a gratuitous passenger or the accidental vehicle was not allowed to carry him for hire and reward, as alleged. If so, its effect? OPR-2.

5. Whether the deceased was being carried in the truck, in question, in contravention of the Motor Vehicles Act, as alleged. If so, its effect? OPR-2.

6. Whether the truck was being driven, at the time of accident, by a

person not possessing a valid driving license, as alleged. If so, its effect? OPR-2.

7. Whether the liability of respondent No.2 is limited under the Motor Vehicles Act, as alleged. If so, its effect? OPR-2.

8. Relief."

Finding on Issue No.1 was returned in favour of the claimants. Apparently because finding on Issue No.4 went against the claimants-appellants, the learned Tribunal in so far as Issue No.2 is concerned neither determined the quantum of compensation nor decided this Issue properly because as per the clear language employed in this Issue, a finding had to be returned as to whether the claimants were entitled, on proof of Issue No.1, to receive any compensation, and if so how much, and from whom. Based upon its findings upon Issues No.3 and 4 against the claimants, the Tribunal went on to decide that because the vehicle was not insured with respondent No.2 and since the deceased was a gratuitous passenger in the Truck, respondent No.2 was not liable to pay any amount of compensation. There cannot be any quarrel with these findings and these findings very fairly and frankly have not even been challenged before me today by Mr. Rathore during

the hearing of this case. Mr. Rathore's contention, however, is that even though the Tribunal absolved respondent No.2 of its liability to pay any compensation to the claimants, firstly on the ground that the deceased was traveling as a gratuitous passenger in the truck and secondly because the vehicle was not insured with respondent No.2, the Tribunal ought to have decided whether respondents No.1 and 3 were liable to pay compensation to the petitioner, especially in view of the Tribunal's finding on Issue No.1 and if yes, to what amount of compensation were the claimants entitled. I fully agree with this contention of Mr. Rathore and do find that the Tribunal erred in not deciding Issue No.2 with respect to both the aforesaid aspects.

It is no doubt true that under Section 96 of the Motor Vehicles Act, 1939 (the accident having occurred in October, 1987, the Claim Petition was filed under Section 110-A of the Motor Vehicles Act, 1939 and was governed by the provisions of the said Act), it was open to an Insurer to object to pay the compensation amount if inter alia there was a breach of a specified condition of the policy and undoubtedly in terms of the said Section 96 of the aforesaid 1939 Act, the Tribunal

was perfectly justified in absolving the Insurer – respondent No.2 of its liability to pay on the ground of a breach of the specified condition of the policy, which with respect to the deceased Durga Singh was about his being carried as a gratuitous passenger in a goods vehicle, but whether under the facts and circumstances of the case, respondents No.1 and 3 were liable or were not liable to pay the compensation to the claimants-appellants was a question and an Issue unrelated to the liability of the Insurer and the Tribunal, therefore, ought to have decided Issue No.2 in the aforesaid perspective. The Tribunal, however, as noticed above, failed to do so.

For the foregoing reasons, even though the appeal is dismissed qua respondent No.2 by upholding the Tribunal's findings primarily on Issue No.3 and ultimately also the result of the Claim Petition which should be treated as dismissed qua respondent No.2, the Claim Petition qua respondents No.1 and 3 is revived with directions to the Tribunal to decide Issue No.2 afresh in the light of its findings on other Issues, without of course having to record any evidence afresh. A fresh decision on Issue No.2 in the light of the aforesaid observations shall

thus be made based upon the material already available on record.

Since respondents No.1 and 3 have chosen to remain absent in this Court also, the Tribunal before proceeding further shall take steps to serve them in accordance with law.

Record be sent back to the Tribunal where the appellants through their learned counsel are directed to appear on 16th November, 2006.

The appeal is disposed of with the aforesaid observations and directions.

10th October, 2006. (V.K. Gupta), C.J.
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